IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.522 OF 1988

Pramilabai Manohar Wadkar ..Applicant.
Vs.
1. Hiralal Daulatrao Bhandari (Deceased)
1A) Mohanlal Hiralal Bhandari
Since deceased by his heirs:
1A1) Sandeep Mohanlal Bhandari
R/o Rajendra Colony,
Nashik Road, Nashik.
1A2) Sangita Ajay Karnavat
R/o opp: Post Office,
At Post Dhanu, Dist. Thane. ..Respondents.

Ms.A.R.S.Baxi, adv. for the Applicant.

Mr.Jayesh B. Kochata, adv. for the Respondent No.1A1 and 1A2.

CORAM : J.H.BHATIA, J.
DATE : DECEMBER 18, 2007.

P.C.:

1. The applicant is the original defendant in Regular Civil Suit No.495 of 1978 and was a tenant in the suit shop situated at Nashik Road, Nashik. The suit was filed by the deceased respondent Hiralal Bhandari for eviction and recovery of possession of the suit premises as well as recovery of arrears of rent against the present applicant. Even though the defendant/present applicant had filed written statement contesting the suit, on number of occasions when the matter was fixed for hearing the defendant did not appear even though her advocate had taken number of

adjournments for cross-examination and for leading her evidence, he did not cross-examine or lead the evidence of defendant. In the result, on 31st December, 1983, the suit came to be decreed. Thereafter, the present applicant filed Miscellaneous Application No.143 of 1983 for setting aside the ex-parte judgment and for restoration the suit to the file. That application came to be rejected. Against that order, she filed Miscellaneous Appeal No.55 of 1987, which came to be dismissed with costs by the Extra Joint District Judge, Nashik as per the judgment dated 17-6-1988. Therefore, the original defendant has preferred the present application against rejection of application for setting aside the ex-parte decree and against dismissal of appeal against that order. Her main contention was that suit was put in sine-die and, therefore, no effective date was given. When the matter was taken up from sine-die and was put on board, dates were not known to her nor her advocate had ever informed her about the proceeding and, therefore, she could not appear to contest the matter.

2. Heard the learned counsel for the Parties. I have carefully perused the impugned order passed by the Civil Judge as well as the appellate Court and the copy of roznama and some other papers.

3. Record reveals that suit was filed in 1978. Issues were framed but in view of the pendency of other old matters, this particular suit was put on sine-die as per the order dated 24-2-1982. It was kept sine-die list for more than one year. On 13-7-1983, it was taken up from sine-die and the matter was fixed for hearing on 3-8-1983. Matter was called on that day. Advocates for both parties were present and the matter was adjourned to 9-8-1993 for hearing. On 9-8-1993 matter was again adjourned to 19-8-1993 because the presiding officer was not available. On 19-8-1993 when the matter was called for hearing, advocates for both the parties were present. Examination-in-chief of plaintiff Hiralal Bhandari was recorded and several documents were exhibited. On that day advocate for the defendant made an application; Exhibit 35 seeking adjournment for cross-examination of the witness. That application was granted and the matter was adjourned to 5-9-1983. On 5-9-1983 advocate for the defendant filed an application for adjournment vide Exhibit 35A. That application was rejected but the matter was adjourned to 16-9-1983. On 16-9-1983 advocate for the defendant again filed application Exhibit 36. On that day advocate for the defendant was present and he participated in the proceeding. On that day examination-in-chief of P.W.2 Vishnu Thakur was recorded. Certain documents were also admitted in

evidence. On that day again advocate for the defendant sought adjournment for cross-examination of the plaintiff and his witness and the matter was adjourned to 17-11-1983. On 17-11-1983 when the matter was called, advocate for both the parties were present. However, the advocate for the defendant filed no instructions pursis Exhibit 45. In view of no instructions pursis, matter was adjourned to 13-12-1983. The advocate for the defendant again filed application for adjournment vide Exhibit 46 but that application came to be rejected. After that the said advocate filed pursis Exhibit 47 that he was retiring from the matter. Therefore, the suit was adjourned to 26-12-1983 for arguments. On 26-12-1983 arguments were advanced by the advocate for the plaintiff and the matter was adjourned to 31-12-1983 for judgment and on that day the judgment was delivered.

4. Two important documents of which there is no reference in the roznama are dated 25-11-1982. As pointed out earlier on 17-11-1983 the advocate for the defendant had filed no instructions pursis and the matter was adjourned to 13/12/1983. Between those dates on 25-11-1982, it appears that, the defendant, her husband and her advocate had come to the Court. On that day, the defendant filed an application under her own signature as well as signature of her advocate

seeking opportunity to cross-examine the plaintiff's witnesses. It appears that application was also supported by the affidavit sworn in by Manohar Wadkar, husband of the defendant. Possibly this application for setting aside the ex-parte order and seeking permission to cross-examine the witnesses was not accompanied by the applicat ion for taking the matter on board and that is why the matter was not taken on board on 25/11/1983 nor reference of these two documents was made in the roznama on that day. However, from this it has become clear that the defendant and her husband were fully aware about the pending proceeding atleast on 25-11-1983. It is material to note that the same advocate for the defendant had drafted these applications and affidavit and he had also signed application for setting aside the ex-parte order. Therefore, it can not be believed that the said advocate had not kept the defendant informed about this proceeding. For a moment, even if it is believed that prior to 25-11-1983, the applicant was not aware atleast on 25-11-1983, she was present. There is nothing on record to show that on next date, i.e., on 13-12-1983 she was present before the Court. Roznama dated 13-12-1983 does not show that advocate for the defendant was ready to cross-examine the witnesses of the plaintiff. On that day also he moved another application only for adjournment and not for

cross-examination of the witnesses. It indicates that the defendant must have been fully aware of the proceeding but one after another applications for adjournment were made only to prolong the matter, which was pending for more than five years. Taking into consideration these circumstances and the facts, the Courts below rejected the contention of the applicant that she was not aware about the dates in proceeding or that her advocate had not kept her informed. It is difficult to find out fault with the findings of the trial Court as well as the Appellate Court on this count. Therefore, I find no substance in the revision application.

5. In the result, revision application stands dismissed.

6. At this stage, the learned counsel makes a request to continue the stay order for further period of four weeks. In the interest of justice, stay to the execution of decree shall continue for further period of four weeks.

[J.H.BHATIA, J.]